

**Amendment and Response**

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Serial No.: 10/728,577

Confirmation No.: 8901

Filed: 5 December 2003

For: POLYMER COMPOSITIONS WITH BIOACTIVE AGENT, MEDICAL ARTICLES, AND METHODS

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**Remarks**

The Office Action mailed January 7, 2010, and the Advisory Action mailed April 9, 2010, have been received and reviewed. Claims 77, 79, 82, and 85 having been amended, the pending claims are claims 2-26, 60, and 75-121. Reconsideration and withdrawal of the rejections are respectfully requested.

Entry of the Response dated March 5, 2010 is respectfully requested.

Consideration of the arguments made therein is respectfully requested/

**Double Patenting Rejection**

The Examiner has maintained the provisional rejection of claims 2-8, 11-19, 21-26, 60, 75-78, 82-84, 88-94, 97-101, 103-107 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 94-117 of copending Application No. 10/728,439 and claims 1-4, 6-35, 37-39, and 45-50 of copending Application No. 10/728,446. Claims 2-8, 11-19, 21-26, 60, 75-78, 82-84, 88-94, 97-101, 103-107 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 and 5-28 of copending Application No. 10/729,114 in view of Asmus (U.S. Patent No. 5,270,358). Upon an indication of otherwise allowable subject matter, and in the event these rejections are maintained, an appropriate response will be provided.

**The 35 U.S.C. §103 Rejection**

The Examiner rejected claims 2-8, 11-19, 21-26, 60, 75-78, 82-84, 88-94, 97-101 and 103-107 under 35 U.S.C. §103 as being unpatentable over Lorenzi et al. (U.S. Patent No. 6,217,889). This rejection is respectfully traversed.

In the Advisory Action, the Examiner stated “the recitation that ‘at least a portion of the active agent is incorporated within the microparticles’ is not part of claimed composition but that portion of the claim is part of the process of making the composition.” Applicants disagree. In the interest of expediting prosecution, however, each independent claim has been

amended to clarify that this phrase describes the resultant polymer composition. Thus, the Examiner must consider this language in the evaluation of the patentability of the claimed article (i.e., wound dressing).

In the Advisory Action, the Examiner also stated “because the hydrogel particles and the beneficial agent are present together, it flows that at least a portion of the active agent is present in the particles.” Applicants disagree. Simply because such components are present together does not necessarily mean that the bioactive agent is within (i.e., incorporated into or impregnated in) the microparticles. The Examiner has provided no basis for this assertion. There is no teaching or suggestion that the techniques used to make the article of Lorenzi et al. would necessarily result in incorporating at least a portion of anti-viral bioactive agent within the gelling agent particles.

In the Advisory Action, the Examiner stated “[t]he particle size and the % amount of the particles are recited within the process of making the product/composition [and not within the claimed composition]...” Applicants disagree. In the interest of expediting prosecution, however, each independent claim has been amended to recite the particle size of the microparticles, thereby describing the resultant polymer composition. Thus, the Examiner must consider this language in the evaluation of the patentability of the claimed article (i.e., wound dressing). Also, independent claims 77 and 79 have been amended to recite the % amount of the particles in the composition. Accordingly, the Examiner must consider this language in the evaluation of the patentability of the wound dressing recited in each of these claims.

In the Advisory Action, the Examiner also stated “wound dressing is in the preamble and is the intended use of the composition and the composition Lorenzi is capable of the intended use...” Applicants disagree. A “wound dressing” is not merely an intended use for the composition. It is an article that has structure, which is recited by the claims. This structure includes an apertured liquid permeable substrate and a polymer composition disposed thereon. Thus, the Examiner must consider this language in the evaluation of the patentability of the claimed wound dressing.

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In the Advisory Action, the Examiner further stated “because, the composition of Lorenzi comprises a substrate that further comprises beneficial agents that can be anionic, non-ionic, cationic, amphoteric lathering agents, or therapeutic agents and which further contains hydrogel particles (col. 9, line 44 to col. 33, line 58), it flows that the polymeric composition also comprises polyurethane or polyesters.” Applicants do not follow the logic of this statement. Regardless, Lorenzi et al. disclose a water insoluble substrate comprising a creped nonwoven layer and a cleansing component, including a lathering surfactant, disposed adjacent to said creped nonwoven layer. Although the nonwoven includes a synthetic polymer, the article is a “personal care article suitable for cleansing” (see, e.g., Abstract). Accordingly, the cleansing component would be subject to being washed or dissolved off the substrate. It is not a wound dressing.

Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. §103(a).

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**Summary**

It is respectfully submitted that the pending claims are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicants' Representatives at the telephone number listed below if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted

By

Mueting, Raasch & Gebhardt, P.A.

P.O. Box 581336

Minneapolis, MN 55458-1336

Phone: (612) 305-1220

Facsimile: (612) 305-1228

June 4, 2010  
Date

By: Ann M. Mueting  
Ann M. Mueting  
Reg. No. 33,977  
Direct Dial (612) 305-1217

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**CERTIFICATE UNDER 37 CFR §1.8:**

The undersigned hereby certifies that this paper is being transmitted via the U.S. Patent and Trademark Office electronic filing system in accordance with 37 CFR §1.6(a)(4) to the Patent and Trademark Office addressed to Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 4 day of June, 2010.

By: Sue Dombroske  
Name: Sue Dombroske

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